

CONTRACT #3
RFS # 331.05-004-08

Department of Education

VENDOR:
Tennessee School Board
Association (TSBA)

RECEIVED

MAY 01 2007

FISCAL REVIEW



STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
6th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

PHIL BREDESEN
GOVERNOR

LANA C. SEIVERS, Ed.D.
COMMISSIONER

TO: Leni Chick, Fiscal Review Committee

FROM: Lana C. Seivers, Commissioner

DATE: May 1, 2007

RE: Request to appear before Fiscal Review Committee regarding Request for Non-Competitive Contract RFS# 331.05-004-08

Please consider the enclosed information regarding a request for Non-Competitive Contract between the Department and Tennessee School Boards Association.

The proposed contract will allow the vendor to provide the legislatively mandated training for new and current board members for LEAs across the State.

We are requesting a five (5) year contract to allow consistency in the planning and implementation of this training with an annual cost to the department of approximately \$250,000.00.

Thank you for your consideration.

CC: Dr. Timothy K. Webb,
Ms. Susan Bunch

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required.
A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	331.05-004-08	
2) State Agency Name :	TN Dept. of Education/ Office of Professional Development	
3) Service Caption :	Training for School Board members throughout the State	
4) Proposed Contractor :	Tennessee School Board Association (TSBA)	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	7/1/07	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	6/30/12	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$1,235,350.00	
8) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
9) Description of Service to be Acquired :	Provide Legislatively mandated training for School Board members throughout the State	
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :	TCA 49-2-2001 mandates the Department to provide the training for local Boards of Education Members. State Board of Education Rules and Regulations (TRR/MS 0520-1-2.11) specify that TSBA develop and conduct these training modules	
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :	Tennessee School Board Association has provided the training since the Legislative mandate, and as specified by the State Board of Education Rules and Regulations. In the past this has been done as a grant, however it was determined that this is a service it is being submitted now as a fee for service contract.	
12) Name & Address of the Proposed Contractor's Principal Owner(s) (<u>not</u> required if proposed contractor is a state education institution)	Tennessee School Board Association, 101 French Landing Drive, Nashville, TN 37228-1511	
13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :	TSBA has provided this service since 1990-91. They are uniquely qualified in that they are the only association in the state that	

represents school boards and their focus and mission is to assist them in effectively governing school districts, by helping the members to obtain their highest potential through association programs, meetings and services.

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one: ☒ Documentation Not Applicable to this Request

☐ Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one: ☒ Documentation Not Applicable to this Request

☐ Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one: ☒ Documentation Not Applicable to this Request

☐ Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

The Department of Education has not attempted to procure alternatives due to TCA 49-2-2001 and TRR/MS 0520-1-2.11 specifying that TSBA develop and conduct the majority of the modules.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

TSBA, with representation from almost every school district, is highly qualified to assist School Boards in effectively governing school districts and to help each member reach their highest potential, which is exactly parallel to the purpose of the Legislative mandate to provide training to School Board members. This was the basis of the State Board of Education ruling cited in # 17 above. It is our intent to secure a five (5) year contract for this service to ensure consistency in the training for school board members, all of whom are public officials and serve a term of four (4) years in office.

REQUESTING AGENCY HEAD SIGNATURE & DATE :
(must be signed & dated by the procuring agency head or authorized signatory)

Lana C. Seivus / SKW

Agency Head Signature

5/1/07

Date

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF EDUCATION
AND
TENNESSEE SCHOOL BOARDS ASSOCIATION**

This Contract, by and between the State of Tennessee, DEPARTMENT OF EDUCATION, hereinafter referred to as the "State", and TENNESSEE SCHOOL BOARDS ASSOCIATION, hereinafter referred to as the "Contractor," is for the provision of pre-planning funds to be used for Charter Applicants to ensure quality application submissions to LEA's, as further defined in the "SCOPE OF SERVICES."

The Contractor is Nonprofit Corporation.

Grantee Vendor Identification Number: [VVENDORID]
Contractor Address: 101 FRENCH LANDING DRIVE

NASHVILLE, TN 37228

The Contractor's place of incorporation or organization is Tennessee

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall update up to eleven (11) modules to be used in training school board members using state-of-the-art instructional technology and activities, including but not limited to the technology specified in the Contractor's proposed budget.
- A.3. The Contractor shall convert the current CD Assessment Module to a web-based module so that school board members can go on-line and take the course and receive their results immediately. The results report will include an explanation of scores as well as suggestions and ideas to help board members further develop their knowledge and skills.
- A.4. The Contractor shall conduct three (3) training sessions on each of the following topics: Vision, Advocacy, Board Policy, Board/Superintendent Relations; and two (2) sessions on Orientation, School Law, Boards Role in School Finance, Boards Role in School Improvement and Planning: A Joint Venture; and one (1) session on Team Building. These sessions are to be conducted at sites and times approved by the Tennessee Department of Education. Each session will be seven (7) hours duration except for Orientation, Planning: A Joint Venture, and Team Building which will be fourteen (14) hours.
- A.5. The Contractor shall provide handouts, manuals, books or booklets to all participants in school board training sessions as specified in the Contractor's proposed budget.
- A.6. The Contractor shall handle registration for all School Board Academies
 - a. Receive registration and enter data, and forward a list of attendees (suitable for use with a press release) for each academy, along with per diem forms, to the State within two (2) days of the instructor's return to Contractor office.
 - b. Assign registrants to academies on the basis of registration date.
 - c. Send out confirmations that have the date, time, and location of meeting to each registrant.
 - d. Send out reminder cards to each registrant one week prior to School Board training.
 - e. Fax a list of registrants to instructors of each academy.
 - f. Send each registrant who does not attend an Academy a letter and another registration form that will be provided by the State.

- g. Secure and contract with hotels or state parks for training sites, room arrangements and refreshments and process invoices for the School Board Academies conducted by the Contractor.
- h. Identify and provide facilitators for "Planning: A Joint Venture" and "Team Building"
- i. Develop and maintain the School Board Academies catalog on-line
- j. Mail each school board secretary a School Board Academy registration packet which includes a School Board Academy catalog.
- k. Prepare and mail certified mailings in December, April and May for school board members who have not registered for a School Board Academy.

A.7. Performance Measures. The following describes quantitative, results-based, performance measures to evaluate successful completion of activities required by this Grant. These measures are agreed by both parties to demonstrate results to be achieved.

- a. Acceptable performance will be determined based upon analysis and summary of evaluations collected from session participants. The evaluations will be developed by the Contractor and will be designed to report on the effectiveness of the program and the benefit demonstrated in regard to the cost. The State agrees to provide information necessary to assure the Contractor has sufficient information to solicit survey responses. The Contractor shall forward a summary of the evaluations by participants to the State within thirty (30) days of completion of each session.

A.7. The Contractor shall handle the payment of all stipends for required School Board Academy training.

- a. The parameters for payment are: New Board Members shall be paid a \$150 stipend for a two day Orientation, and all Board members shall be paid a \$75 stipend for attendance at a one day training module, in addition to orientation. Team Building and Planning a Joint Venture are two day modules and \$150 shall be paid for attendance. No Board Member other than New Board Members or those attending two day modules shall receive more than \$75/year. The maximum any experienced Board Member can receive is \$150/year and the maximum New Board Members can receive is \$225/year.
- b. Processing shall include:
 - 1. Initial entering of data into accounting software
 - 2. Entering/processing/ mailing of per diems to all Board Members
 - 3. Entering/processing/ mailing of per diems to Board Members attending Orientation
 - 4. Entering/processing/ mailing of per diems to Board Members attending Planning a Joint Venture or Team Building.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on July 1, 2007 and ending on June 30, 2012. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million Two Hundred Thirty-Five Thousand Three Hundred Fifty Dollars and No Cents (\$1,235,350.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract

or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

SERVICE UNIT/MILESTONE	AMOUNT
Orientation	\$11,400.00/upon completion/event
Policy & Board Operations	\$10,021.64/upon completion
Planning: A Joint Venture	\$11,262.52/upon completion/event
School Law	\$6,007.36/upon completion
Board/Superintendent Relations	\$15,352.80/upon completion
Vision	\$10,743.60/upon completion
Advocacy	\$10,274.90/upon completion
Board's Role in School Finance	\$9,395.60/upon completion
Board's Role in School Improvement	\$6,199.30/upon completion
Team Building	\$6,135.64/upon completion
Registration Services	\$33,046.64/upon completion
CD Assessment	\$20,160.00/upon completion
Stipends	\$87,750.00/\$75/day
Administrative Fee	\$9,320.00/upon completion

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The State is not bound by this Contract or any amendment thereof until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least Thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document as Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon

reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under ***Tennessee Code Annotated***, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Barry Olhausen
DEPARTMENT OF EDUCATION
5th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243
Telephone Number: 615-532-4713
Fax Number: 615-532-8312

The Contractor:

Tammy Grissom
TENNESSEE SCHOOL BOARDS ASSOCIATION
101 French Landing Drive
Nashville, TN 37228
Telephone Number: 615-741-0666
Fax Number: 615-741-2824

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.

E.5. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services. Such procurements shall be made on a competitive basis, where practical.

E.6. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.7. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that::

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

E.8. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor relative to this Contract shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Contractor shall be approved by the State.

E.9. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

E.10. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or

inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.11. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

E.12. Public Accountability. If the Contractor is subject to Tennessee Code Annotated, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

E.13. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

E.14. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

E.15. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in Tennessee Code Annotated, Section 8-36-801, et. seq., the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if

a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to Tennessee Code Annotated, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

IN WITNESS WHEREOF:

TENNESSEE SCHOOL BOARDS ASSOCIATION:

Tammy Grissom, Executive Director

Date

DEPARTMENT OF EDUCATION:

Lana C. Seivers, Commissioner

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date

ATTACHMENT 1

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE:

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.